Theory, Culture & Society
http://tcs.sagepub.com/

Alternatives to the Prison: Dissemination or Decline of Social Control?

Michel Foucault

Theory Culture Society 2009 26: 12
DOI: 10.1177/0263276409353775

The online version of this article can be found at:
http://tcs.sagepub.com/content/26/6/12

Published by:
SAGE
http://www.sagepublications.com

On behalf of:
The TCS Centre, Nottingham Trent University

Additional services and information for *Theory, Culture & Society* can be found at:

Email Alerts: http://tcs.sagepub.com/cgi/alerts

Subscriptions: http://tcs.sagepub.com/subscriptions

Reprints: http://www.sagepub.com/journalsReprints.nav

Permissions: http://www.sagepub.com/journalsPermissions.nav

>> Version of Record - Dec 9, 2009

What is This?

Downloaded from tcs.sagepub.com at Scientific library of Moscow State University on February 5, 2014

Alternatives to the Prison

Dissemination or Decline of Social Control?

Michel Foucault

Editorial Note: This lecture was given by Michel Foucault on 15 March 1976 at the University of Montreal in answer to a number of questions posed by the organizers of a conference on the rights of prison inmates. It was taped-recorded at the conference, transcribed soon after (with Foucault's permission) and deposited in a file at the university's library where it was rediscovered soon before its publication in 1993 in a special issue of *Criminologie* entitled 'Michel Foucault et la (post)modernité'. For that publication, the lecture was edited by Jean-Paul Brodeur who, in a brief introduction, explained that he has tried to remain faithful to the oral style of the original presentation, limiting the editing to resolving problems of grammar and punctuation. This translation respects this intention whilst reorganizing a number of sentences for the sake of clarity and syntax, and to avoid a few repetitions that detracted from the flow and sense.

The editors of *Theory, Culture & Society* are grateful to colleagues at the University of Montreal who sent a copy of the transcript to us a few years ago following an inquiry from Vikki Bell, and to Jean-Paul Brodeur who edited the lecture. We wish also to thank Gallimard for granting us copyright of the English translation. The French version can be found at *Criminologie*, Vol. 26, No. 1, 1993: 13–34. The lecture is also mentioned in a footnote in *Dits et Ecrits*, though it is not included in that collection of Foucault's works.

The 'prison lecture' of 1976, though knowingly provocative, since it was addressed to an audience of criminologists, makes a number of points that throw new light on his thinking about the emergence of biopolitics, a theme he developed in the lectures at the Collège de France between 1975 and 1979. In particular the arguments about the place of work, the family and self-punishment in the reintegration or rehabilitation of the criminal, and the proposition about the usefulness of crime and illegalisms for the exercise of power and for social control, echo arguments in *Security, Territory, Population*. The claims about the differential redistribution of illegalities, and the profitable commerce between criminality, capitalism and power, could be interestingly juxtaposed with Foucault's critique of neoliberalism in *The Birth of Biopolitics*.

■ *Theory, Culture & Society* 2009 (SAGE, Los Angeles, London, New Delhi, and Singapore), Vol. 26(6): 12–24
DOI: 10.1177/0263276409353775

Downloaded from tcs.sagepub.com at Scientific library of Moscow State University on February 5, 2014

Abstract
This paper examines the problem of alternatives to the prison in order to problematize the prison as an institution, as a form of punishment and as a system for promoting respect for the law. It argues that the mechanisms that were central to the prison during the 19th century, such as the practice of penitence as a principle of rehabilitation, the family as agent of correction, or as agent of legality, and labour as a fundamental instrument for punishment, still operate today, if in altered forms, in both the conventional and alternatives types of prison. The prison has been a factory for producing criminals; this production is not a mark of its failure but of its success. Prison manages control over illegalities by means of a whole set of apparatuses that manage their reorganization, redistributing them according to an economy of illegalisms. It may well be that changes in the economy and in the mechanisms for regulating populations mean that the carceral functions of the prison are today being disseminated at the level of the social body, so that they would now operate beyond the space of the prison through multiple instances of control, surveillance, normalization and re-socialization. The question of the prison cannot be resolved or even posed in terms of a simple penal theory. Neither can it be posed in tems of a psychology or sociology of crime. The question of the role and possible disappearance of the prison can only be posed in terms of an economy and a politics, that is, a political economy of illegalisms.

Key words
biopolitics ■ colonialism ■ genealogy ■ inequality ■ networks ■ political economy

YOU HAVE asked me to speak about an alternative to the prison in the context of a conference on the 'failure of the prison'. I must say I find this an awkward topic to address because of this problem of an alternative and, additionally, the problem of failure. The question of an alternative to prison typically brings to mind the scenario of a choice between different kinds of punishment, for example, when asking a child to choose between being caned or being deprived of dessert as punishment. It is a false or at least a loaded question since it in effect asks people to take for granted the existence of a penal regime that grants to particular individuals the right to punish people for particular things, and to consequently think about which system of punishment should operate: imprisonment or some other form of punishment?

One's response to this situation should at first be to object to it, or express an initial misgiving, or else to burst into laughter, for what if we do not wish to be punished by particular people or for particular reasons, or even if we do not wish to be punished at all? And what if in fact we are unable to understand what punishment means? Does this matter of punishment that has for centuries or millennia appeared evident to Western civilization come down to this? What does it mean, this thing called punishment? Should one really punish people? So, you understand my qualms in

Downloaded from tcs.sagepub.com at Scientific library of Moscow State University on February 5, 2014

speaking about this subject of an alternative to the prison, especially when it is framed by the idea of its failure, since I believe that, paradoxically, far from the prison failing, it has been succeeding pretty well.

I would like therefore to begin with this problem of an alternative, and situate it by reference to a number of cases that attempt to explore possible alternatives to prisons. Let us start with the Swedish case: in 1965, Sweden introduced a new penal legislation, the first provision of which was a programme for creating seven major penitential establishments, planned with great precision to be perfect institutions, drawing lessons from experience concerning the granting of indulgences. The first and most important of these institutions, opened in 1967 or 1968, was the one at Kemela, a vast penal edifice that was the realization in a pure form of Bentham's *Panopticon*, that phantasy of the classic idea of penality.

Well, in this amazing prison there occurred what happens in all prisons; first, a massive breakout, then the resumption of a life of delinquency by the escapees. If we admit that prisons discharge two functions – first, to ensure the secure and unbroken detention of individuals – the breakout at Kemela demonstrates that the model wasn't quite up to the task yet. Second, the fact that they re-offended almost immediately was sufficient evidence that the rehabilitational function of this wonderfully designed prison had also failed in its objective.

What, then, was the point of such a perfect prison if there is neither security nor rehabilitation? The Swedes immediately recognized this, and in 1973 they tried to elaborate a programme that would be an alternative to classic prisons. Its main features were that, first of all, these institutions were to be small establishments of 40 to 60 people, in which individuals, though forced to work of course, were not subjected to the usual kind of stupid, uninteresting, mind-numbing, humiliating, unpaid labour. It was proper, real, useful work, paid according to the rates applying outside, thus work that was, if you like, inserted into the economic reality of the country.

Second, they were establishments which also tried to maximize contact between the individuals and the outside world instead of trying to eliminate such contact with their families and familiar surroundings. These establishments were designed with a number of rooms, rather like a small hotel or boarding house, so that the inmates' family could visit and they could make love with their wives or girlfriends.

Furthermore, in these prisons the organization of the administrative as well as financial matters, basically the general management of the place, including the penitential programme, was subject to discussion between the administrators on the one side and committees of the prisoners on the other which participated in drafting the penal regime that applied to all prisoners and was eventually geared to each individual.

Finally, in these new model prisons, or rather alternatives to the prison, leave of absence was granted much more frequently, not simply as a reward for good conduct, but as a means towards reintegration into society.

Downloaded from tcs.sagepub.com at Scientific library of Moscow State University on February 5, 2014

I picked this example, but I could have opted for a German case, that of institutions developed from 1970, which were classic places of incarceration, but around which attempts were made to set up transitional and training places, and social and therapeutic centres, as in Burer, where penitential programmes were individualized, farms were set up, and rural centres provided for young delinquents.

I could also have mentioned the anti-criminological programmes like the one at Versel, or at Vanest and Ringelheim in Belgium, that proposed similar institutions also, and especially those places where the public had a direct participation by monitoring the general management of the house, as well as being permanently involved in decisions about the progress of the inmates, their employment opportunities, their relative freedom, their release date.

The question is: What is the purpose of these establishments that are proposed as alternatives to the old prison? It seems to me that they are not so much alternatives as quite simply attempts to ensure through different kinds of mechanisms and set-ups the functions that up to then have been those of prisons themselves. Basically, one could say that in all these new practices, the punitive operation that one is seeking is centred on work. That is to say, what is preserved, and what one is trying to perfect, is the old idea, current in the 19th or 18th century, that it is labour itself that essentially functions to transform the prisoner and restore peace. It is labour which is supposed to be the best means for the prevention of offending. It is labour that would be the best means for true punishment. It is labour that is meant to be the most effective correctional method, and thus the essential and fundamental response to law-breaking.

This idea is both classic and relatively new to the extent that it is towards the end of the 18th century that people had the strange idea that one had to respond to crime by something other than death, torture, a fine, or exile, namely by some kind of constraining labour to which the individual would be compelled. This idea, new at the time, has gradually become totally conventional, in spite of failing every time it has been applied. The whole idea of prison, its organization and its functioning from the 19th century, has been centred around this view of labour as the key and basic response to the prison. So, you can see that it is basically this same idea that one finds in both the old prison and in the establishments that are presented as alternatives to prisons, even if the work is not quite the same, and does not relate in the same way to the economic reality of the society.

Second, I think that in these alternative establishments one finds what I would call the principle of refamilialization (*refamilialisation*), operating through different mechanisms, yet preserving the idea that it is the family which is the essential instrument for the prevention and correction of criminality. This idea existed already in the 19th century, though rather odd means were used for the refamilialization of the prisoner, since the responsibility for this task was assigned to chaplains or prison visitors or philanthropists who would use sermons, admonishments or good examples to

Downloaded from tcs.sagepub.com at Scientific library of Moscow State University on February 5, 2014

achieve their ends. It was thus an abstract and fictitious form of refamilialization, yet it has been the guiding thread in evidence for penal work in the 19th century. This is the case to such an extent that when houses of correction were set up for young offenders, such as at Mettray in France, it was the idea of refamilialization, rather than that of familialization, that was put into practice even more rigorously than in other prisons, in the form of more or less artificial families that were constituted around the children. Placement with families followed; in any case, it was the family that was thought of as the fundamental agency for legality, for disciplined life, or for a return to lawful life. It is this very idea of the family as the agent of legality that one finds unchanged, if inscribed in modified mechanisms, in the institutions constructed as alternative to the prison.

Finally, in these contemporary establishments, there is an attempt to make prisoners themselves participate in devising the very programmes for their punishment, through the prisoners' councils and so on. This is the idea that the individual, singly or collectively, is meant to accept the punitive procedure. By playing a part in the definition of punishment and its administration, the individual being punished is made to take on the management of his own punishment. And this too is an old principle, which is that of repentence, tried out in the 19th century. The process of making amends was supposed to start when the individual begins to consent to his punishment, when he acknowledges his own culpability.

This idea was implemented around 1840–50 through methods like the isolation of the prisoner, for life in a cell was supposed to lead him to contemplation and reflection. Today it is not the cell but the decision-making council which is assigned the same objective, that is, of self-punishment as the principle of correction.

And so, we have three great mechanisms that characterized the prison during the 19th century: self-punishment as principle of rehabilitation, the family as agent of correction, or as agent of legality, and labour as fundamental instrument for punishment. These are the old carceral functions that are at work still, and even more emphatically, in establishments that no longer resemble the prison and are labelled as alternative.

In a sense one could say that the problematization of the prison, its partial demolition, and the opening of some walls inside the prison combine to partially liberate the delinquent from the strict, total and exhaustive incarceration to which he was subjected in the 19th-century prisons. One liberates up to a point, yet I would say that something else is unshackled at the same time as the prisoner, something that exceeds him: one liberates the carceral functions. The carceral objectives of resocialization through work, through the family and self-culpabilization, are now no longer localized in the closed space of the prison but are being extended and diffused throughout the whole of the social body by these relatively open establishments.

One could say that these new types of institutions, emerging in Sweden, Germany, Belgium, Holland, are not really alternatives, or not the

Downloaded from tcs.sagepub.com at Scientific library of Moscow State University on February 5, 2014

only ones we can imagine. There are others, if one is effectively looking for a form of penality that avoids the institutionalization of the individual, by putting him neither in the typical penitential institution nor in the modernizing, improved, and alternative detention centres. There are thousands of examples of this system of punishment that do not take the form of establishments that are more or less closed, since this approach began with the practice of remission. Recently, this has been tried out through the elimination of short-term punishment, of different lengths, as in Poland, Holland, or Germany, where a relatively widespread but more flexible and affordable, for the less well-off, system of fines has been introduced. There are also alternatives that rely on the temporary suppression of particular rights, like the right to drive, to leave a designated area, or the imposition of certain kinds of labour, but without confinement. In short, there are signs that one is trying to punish the individual by ways that do not include the incarceration of one's body in one form or another of a prison.

Yet, even in these forms of alternatives to the prison one needs to point out several things: they are all a relatively limited extension of the prison outside its boundary. Many of these measures, such as remission, or partial detention, are simply a way of delaying or deferring imprisonment, or a way of diluting the time of imprisonment over a whole period of one's life; they are therefore not a system that abolishes detention. A fundamental issue arises therefore, which is that these new methods that try to punish without imprisonment are basically a new and more efficient way of re-implementing the older functions of the carceral that I noted earlier.

The fact of imposing a debt on someone, of cancelling a number of his freedoms, such as those of movement, are other forms of immobilizing him, of making him dependent, of binding him to an obligation to labour or be productive or live in a family. Above all, they are so many more ways of diffusing outside of prisons the functions of surveillance that will henceforth be exercised not on the individual confined to his cell but dispersed across his apparent life of freedom. Besides, an individual who is on probation is one who is under surveillance amidst the plenitude or flow of daily life, in the midst of the constant relations with family, work, and associates; it is a form of control over his salary, how he uses it, how he manages his budget; it is a surveillance over his whole environment.

All these alternatives to the old forms of incarceration have as their function the aim of disseminating as far as possible all those forms of power that belonged to the prison, to spread them as a cancerous growth beyond the prison walls. It is truly a penal or carceral surplus-power that is developing, whilst the prison as an institution is diminishing. The castle falls, but there is an attempt to deliver through different mechanisms the social functions, or the functions of surveillance, control and resocialization that the institution-as-prison was meant to ensure.

Of course one must not immediately conclude that what is being put in place through these seeming alternatives will be worse than the prison. It is not worse, though one must bear in mind that, in relation to a system

Downloaded from tcs.sagepub.com at Scientific library of Moscow State University on February 5, 2014

of incarceration, there is nothing really alternative in these new methods. It is more a matter of the transmission (*démultiplication*) of the old carceral functions that the prison implemented in a rather brutal and inefficient way, so that they are now achieved in more flexible, free and also more extensive ways. They are all variations on the same theme of punishment through confinement. It is the same set of procedures for punishment that were in effect in the 19th century, whereby when someone commits a crime or transgresses in some way, his body will be seized upon; one will exercise total control over him as an individual, place him under surveillance, force his body to labour, prescribe behavioural schemas for him, and prop him up endlessly by mechanisms of control, judgement, rotation, and improvement. These alternatives to the prison are thus but forms of the repetition of the prison, forms of the diffusion of the prison, and not its replacement.

I would like therefore to point to a problem, given that the institution of the prison is now the target on several fronts of critiques and problematizations. The question for me is whether the prison is disappearing because its function is being taken over by new mechanisms, or whether we should consider that once its carceral functions will have been disseminated outside its walls, these functions will themselves gradually fade. In other words, would the disappearance of the apparatus be followed by that of the function?

What political meaning should one attribute to the fact that the prison is today problematized not only from the standpoint of oppositional milieus, but also by various governmental councils, and by decisions taken by various states? Does the search for an alternative to the prison announce the disappearance of the prison to be followed by that of its functions? Or is it more accurate to speak about the renewal of essentially the same penal mechanisms?

This is the question I would like to address, by examining, to begin with, a prior question, namely, that of the purpose of the prison, its solidity, its compactness, its walls, its cells, its disciplinary regime. What was its usefulness as an institution, what underlied its emergence? What was happening in order for the prison, invented as a device at the end of the 18th century, to last for two hundred years in spite of the countless critiques, some of which were as radical as those formulated nowadays, to which it has been subjected, not just recently, but soon after its institutionalization as the principal means of punishment in the European criminal system of justice? The answer to this question will enable us to understand what the search for an alternative means.

To begin with, I'd like to propose an hypothesis, a paradoxical one, since I am not sure it can be verified by thoroughly scientific arguments; it is more of a working hypothesis, or a political one, or perhaps a kind of strategic game to test the limits of its implications. And it is this: Is a penal politics, a code regulating the procedures and mechanisms of punishment – is this whole judicial apparatus, seemingly designed to suppress lawbreaking, not in fact designed to organize illegalities? Does it in effect serve

Downloaded from tcs.sagepub.com at Scientific library of Moscow State University on February 5, 2014

to differentiate illegalities, to order them in a hierarchy so that one can decide which ones to tolerate and which merit punishment, and what manner of punishment is appropriate? Does the penal machinery have as its aim not the elimination of illegalities but, on the contrary, the aim of control over them, of maintaining them in a state of equilibrium that would be economically useful and politically advantageous? In short, should penal politics not be understood as a means for managing illegalities? In other words, is penality really about a war waged against breaches of the law or simply a particular planned economy of crime?

I think one can find in the very functionning of prisons the evidence for this idea that the penal system, in spite of the orders it assigns to itself, is not really an apparatus for suppressing crime but is in fact a mechanism for the management, the differential intensification, the dispersal of illegalisms – a mechanism for the control and distribution of different illegalities.

Carceral institutions have often been studied, their architectural disposition and their meticulous regulation have been well established. The physical and moral destitution of the inmates has often been decried. Yet, I think one should probe more systematically the extent and forms of illegalities that prison incites. Even more, one should study all the illegalities that are necessary for the prison to operate. The prison is basically a permanent centre for intensive illegalities. The prison is surely the most efficient and productive of all the institutions that foster illegalities. There are many reasons for this, not least the well-known fact that people come out of prison more delinquent than they were when they went in. It condemns those it has recruited to a life of crime because of the effects of social alienation and the criminal record, the formation of delinquent groups, etc. Whilst all this is well known, it is important to emphasize that the internal working of the prison is made possible on the basis of a play of complex and multiple illegalities. One should recall that the internal rules of the prison are always absolutely contrary to the fundamental laws that in the rest of society guarantee the rights of man. The space of the prison is a fearsome exception to right and to the law. It is a place of physical and sexual violence; it is also, as we know, a place of ceaseless and necessarily illegal traffic amongst the inmates, between the inmates and the guards, the guards and the outside world, a traffic which is besides absolutely vital: it enables the inmates to survive, sometimes physically, and it produces a surplus that allows the guards to live through their intolerable situation. The prison is also a place where the management daily practises illegalism, be that only to hide from the judicial system or the higher adminstrative levels and public perception all the illegalities that happen inside the prison. One could add that the prison is equally the place where the police recruits its petty criminals, its informers, its hired hands, etc.

I repeat these truisms because unfortunately sociologists studying the functioning of these institutions have not tried to construct a diagram of this network of illegalities that pass through the prison and sustain it. There have

Downloaded from tcs.sagepub.com at Scientific library of Moscow State University on February 5, 2014

been descriptions but no systematic study as far as I know, though there have been brilliant accounts based on interviews that detail for instance the sexual abuse that goes on, and generally show that things work in prison only on the basis that everything is illegal.

I do not know if criminologists can establish something like the rate of illegality specific to an institution, for example, the rate of illegality necessary for a school to function, or a bank, or the tax office. Each institution has its rate of illegalism which is necessary and sufficient for it to exist; I am sure the prison must have the highest rate. The prison is institutionalized illegalism. One must therefore never forget that at the heart of this apparatus of justice that the West devised for itself on the grounds of suppressing illegalities and fostering respect for the law, there is a machinery whose functioning relies on permanent illegality. Prison is the darkroom of legality, the *camera obscura* of legality.

So, why has a society such as ours, which has provided itself with such a solemn and perfected apparatus to promote respect for the law, placed at its centre a little mechanism that works through illegality and is a factory for law-breaking and illegalities?

There are many reasons for this, but one which stands out is this: before the emergence of the prison at the end of the 18th century, the chains of the penal system were basically very wide ones. Illegalism was a kind of constant and general function in society, both because of the deficiency of power and because illegality was indispensible in a society in the process of economic mutation. Between the 16th and the 18th century, the major mutations constitutive of capitalism had to a large extent passed through channels that were those of illegality with regard to the institutional forms of the regime and of society. Smuggling, piracy at sea, fiscal evasions, as well as a whole system of fiscal extractions, have been the channels by which capitalism has been able to develop. To that extent, one could say that the collective tolerance of the whole of society of its own illegalities was one of the conditions not only for the survival of that society but for its own development. Besides, social classes were themselves locked in rivalry, and often in complicity around illegalities. Smuggling, for example, which enabled a whole layer of the lower classes to survive, benefited the bourgeoisie just as much, and the latter did nothing in the 18th century, or even the 17th century, to suppress the smuggling of tobacco, salt, etc. Illegality was one of the avenues of both political life and economic development. However, when the bourgeoisie not so much acquired power in the 19th century, which it already had for a long time, but managed to organize its own power, creating a technique of power that was homogeneous and coherent in relation to industrial society, it is clear that this general tolerance for illegalism could no longer be accepted.

Of course, the bourgeoisie continued, as with other societies, to function by means of illegality. It provided itself with a whole series of illegalities that benefited it, concerning taxes, the rights of companies, etc. – in short, all the major traffics of capitalism pass through some kind of

Downloaded from tcs.sagepub.com at Scientific library of Moscow State University on February 5, 2014

illegality. However, whilst the bourgeoisie accommodated its own illegalisms perfectly well, those of the popular classes that had served it well in the 17th century ceased to be tolerable in the 19th century. It therefore tried to control and curb such illegalities that had become economically and politically unacceptable.

Indeed, from the point of view of the economy, from the time that a capitalist bourgeoisie emerged, that placed in the hands of the mass of workers machines, tools, raw materials, etc., every act of smuggling, every misappropriation, every minor theft took on proportions considered economically intolerable or dangerous. The morality of the worker became indispensable as soon as an industrial type of economic organization appeared. Equally, the Revolution and all the popular uprisings, the political movements that from the end of the 16th to the middle of the 19th century caused Europe to tremble, made necessary the tight control of popular illegalities. The bourgeoisie thus needed a penal mechanism capable of eliminating the condoning of illegality characteristic of the ancien regime.

In fact, once a marginal section of the population became dedicated to delinquency, a powerful instrument was found. First of all, once illegality became to some extent professionalized, carried out by a specific layer of the population, and thus no longer diffused across the social body, it became easier to place it under surveillance. Secondly, this constituted group quickly came into conflict with the mass of the population which became its victims. From the 19th century, the conflict between criminals and the mass of the population has been a constant target of power. Furthermore, the existence of this group of criminals, towards which the population could not but be hostile, made more acceptable the permanent presence of the police at the very heart of the population.

The appeal to fear, ceaselessly renewed by crime novels, by the press, by films, the appeal to the fear of the delinquent, the whole apparently glorifying but in fact fear-inducing technology, this mythology constructed around the figure of the delinquent and the crime boss has naturalized the presence of the police in the midst of the population, a police which is itself a rather recent invention, appearing at first in France at the end of the 18th century and copied everywhere. This group of criminals, once constituted and professionalized, serves many ends, including as spies and informers in projects of surveillance as well as for carrying out illegalities that are profitable for the class in power, such as illegal traffics that the bourgeoisie prefer to delegate. So you see that crime and its professionalization has been the instrument for a good deal of economic and political gains. And it is precisely the prison which has been the instrument whereby the criminal is labelled, professionalized, recruited, circumscribed by that status and has thus become the target of an indefinite surveillance.

The prison has been a factory for producing criminals; this production is not a mark of its failure but of its success. Prison makes re-offending possible, it ensures the professionalization of the criminal, it manages

Downloaded from tcs.sagepub.com at Scientific library of Moscow State University on February 5, 2014

control over illegalities by means of the criminal record, the mechanisms of surveillance, the presence of informants amongst criminals helping to provide a detailed knowledge of the criminal environment. The effects of this apparatus exclude social reintegration, ensuring that delinquents remain so and thus remain, so to speak, at the disposal of the police. The prison is thus not the instrument which the criminal justice system has set up to fight illegality; it has been the instrument for the reorganization of the field of illegalities, for redistributing the economy of illegality between that of the professionalized criminal and that of the class in power. The prison does not inhibit, it redistributes.

One need only consider one or two cases to confirm this: take for instance the role of crime from the 19th century until recently in profiting from sexuality. Sexuality is something that one should be able to satisfy without having to pay into a system that makes a profit from it. Yet the extensive organization of a system of prostitution in all bourgeois societies in the 19th century has enabled absolutely fabulous fortunes to be made from sexual pleasure, fortunes that have only recently been calculated. Who are the employees and the agents levying and watching over the profits from sexuality? They are the criminals, the procurers, pimps, hoteliers, etc., who each in his own way channels this undeclared profit towards perfectly respectable financial institutions.

One could see the same role of intermediary being played by criminals in the case of their use in the 19th century in the struggle against workers and trade unions. Strike breakers, *agents provocateurs*, the elements for infiltration of trade unions have traditionally been recruited from amongst criminals. And one need not look too deeply in the phenomenon of the Mafia in North America to recognize that crime in this case as well continues to play this economic-political role that it acquired in the 19th century. Thus it is clear that the reason why the prison has been so important for so long, and why it has continued to exist in spite of all the critiques and objections, is due to its importance as part of a social reality and its evident economic and political role.

Finally, one question remains. Whilst one can show why and how the prison is or has been useful, we are now seeing a number of critiques coming from different positions, and the prison appears to some extent to be in decline; but, what is really going on here? Is this an illusion whilst in fact the prison will remain as it is, or is it losing its usefulness and its role? I think first of all that the prison does seem to be in decline, not only as a consequence of critiques from the left and from philanthropic quarters, but because basically the need for criminals has diminished in the last few years. Power no longer requires criminals. In particular, there is no longer the urgency to prevent all these minor illegalities, such as petty theft, that had become so intolerable in the 19th century. There is no longer the need to terrorize people for petty theft. Today, one knows how to exercise forms of overall control, one tries to limit theft within tolerable limits, one knows how to calculate the cost of the struggle against theft, and what it would cost

Downloaded from tcs.sagepub.com at Scientific library of Moscow State University on February 5, 2014

to tolerate it – say, regarding theft in department stores, insurance against such risks, measures taken against fraud concerning sickness or social benefits, etc.; one knows therefore the optimum point between a surveillance that will prevent theft from crossing beyond a particular limit and a tolerance that allows theft to remain within limits that are economically, morally and politically favourable. Consequently, the idea of a radical, individual and timely suppression of working class illegalisms is thought politically overtaken and economically absurd. Minor illegalities are now part of acceptable social risks.

Secondly, I think that crime, or a criminal milieu, has lost its political and economic utility. For example, to return to the case of prostitution, we know that now other more effective means have been found to extract profits from sexuality, namely, the sale of contraceptives, sexual therapies, sexology, the psycho-pathology of sex, psychoanalysis, pornography; they are all more efficacious and more entertaining methods for extracting money from sexuality than tedious prostitution.

One could also point out that now the major international forms of traffic, those of weapons, of drugs, and currency, are run by big international smugglers and are beyond the ability of the traditional criminal milieu formed by the prison. It is the big capitalists themselves who take responsibility for managing these major illegalities. To that extent one can say that delinquency is increasingly losing its efficacy and interest. This is probably why the critique of this old secular institution of the prison is for the first time beginning to have an effect. It is therefore not surprising that the alternatives I discussed earlier are now beginning to appear, but this willingness to knock down at least the lower walls of the prison owes little to the criticisms of criminologists or philanthropists; the fact is that for the first time the advantages of the prison are starting to disappear. Instead of the factory for producing criminals, the need now is for other more sophisticated and flexible means for relaying the control of illegalities, and this is the method of control through know-hows (*le savoir*): psychology, psycho-pathology, social psychology, psychiatry, social psychiatry, criminology, etc.

These are the new and more efficient instruments that will be put in charge of social control, replacing the cruder prison-criminality couple. A new couple is now required, that of control and the abnormal, operating through monitoring instruments to carry out the old role of prisons and criminality by targeting deviant individuals through quite different extensions and measures of effectivity.

What conclusions can one draw from all this? I shall not suggest propositions since I do not believe in the failure of the prison but its success, so complete that we no longer require criminals. The prison is simply in a normal stage of regression. Yet there is no alternative to the prison, or rather those proposed are more precisely other methods that carry out on a vaster scale the functions of the old prison-criminality couple.

At the practical level, I shall end with two or three purely tactical considerations. First, these attempts to reduce the role of prisons, whilst

Downloaded from tcs.sagepub.com at Scientific library of Moscow State University on February 5, 2014

laudable, are in themselves neither revolutionary, nor contestatory or even progressive. Ultimately, they probably do not much trouble the system we have.

Secondly, the effort to reduce the role of prisons could be a way of allowing the carceral functions of the prison to operate without hindrance, shifting from their site inside prisons to extend beyond the space of the prison through multiple instances of control, surveillance, normalization and re-socialization. The critique of the prison, the search for alternatives, would be politically naive were it not suspicious of this rediffusion of the mechanisms of the prison at the level of the social body.

Thirdly, the question of the prison cannot be resolved or even posed in terms of a simple penal theory. Neither can it be posed in terms of a psychology or sociology of crime. The question of the role and possible disappearance of the prison can only be posed in terms of an economy and a politics, that is, a political economy of illegality.

The questions to pose to power are not about when it is going to abolish these ugly institutions; rather, they should be directed at challenging power's rhetoric about the law, about respect for the law, and ask it instead to explain how it puts illegalities to work. The real problem, therefore, concerns the differences that people in power make between different illegalities, the different ways of dealing with their own illegalities as opposed to those of other people: how are different illegalities managed in order to serve different ends, what profits are derived from them? These are the questions about the general economy of illegality that one must ask of power, and, since one cannot expect an answer, the point is to analyse these questions. The problematization of penal law and penality would remain abstract if it fails to take account of the vast economico-political context of the functioning of illegalities in society.

Finally, I would like to recall the familiar point that there can be no reform of the prison without the search for a new society. Yet if one is trying to imagine another society in order to imagine another form of punishment, the issue is not about a form of punishment that would be more gentle, acceptable or efficient, for a prior question arises which is more difficult to address, and it is this: can one in effect conceptualize a society in which power has no need for illegalities? The problem then is not about people's fondness for illegality, but about the need that power has to own illegalities, to control them, and to exercise its power through them. Whether this happens through the prison or the Gulag, the problem is this: can a power exist that does not have a fondness for illegality?

Translated by Couze Venn

Downloaded from tcs.sagepub.com at Scientific library of Moscow State University on February 5, 2014